



APPROVED

TOWN OF DUCK  
PLANNING BOARD  
REGULAR MEETING  
August 9, 2023

The Planning Board for the Town of Duck convened at the Paul F. Keller Meeting Hall on Wednesday, August 9, 2023.

Present: Chair Marc Murray, Joe Blakaitas, Brenda Chasen, James Cofield and Council Liaison Sandy Whitman.

Also present: Director of Community Development Joe Heard, Senior Planner Sandy Cross, Community Planner Jim Gould and Deputy Town Clerk Melissa Felthousen.

Not present: Vice-Chair Bob Wetzel.

Chair Murray called to order the Regular Meeting of the Planning Board for August 9, 2023 at 6:30 p.m.

PUBLIC COMMENTS

None.

NEW BUSINESS

*ORD 23-12: Text Amendment to the Residential Parking Standards found in Section 156.092 of the Zoning Ordinance to Clarify that Crush & Run and Similar Materials are Impervious Materials*

Community Development Director Joe Heard stated the Town Council approved the review of ORD 23-12 by staff and the Planning Board. He indicated that on several recent occasions staff encountered instances involving contractors using crush and run, an impervious material, as underlayment in single-family residential parking areas. Heard explained the proposed amendment to ORD 23-12 Subsection 156.092(C) is to clarify that crush and run and similar materials are impervious surfaces and cannot be used as a surface or subsurface material to satisfy the requirement for semi-permeable parking for single-family residential properties. He added that available research seems to support the consideration of crush and run as an impervious surface. Heard clarified that the reason that the Town has gravel parking surface requirements is it decreases the amount of lot coverage and improves stormwater runoff.

Chair Murray asked the Planning Board members for questions or comments.

Member Cofield stated the amendment was straightforward and he supports same but questioned if industry standards for which decisions can be based were available. Heard stated having a subbase that is impervious is going to help the function of parking to support a vehicle, therefore the construction industry would probably support a stronger subbase. He explained the Town's intent is not to provide the strongest possible subbase, but to provide impervious areas where stormwater can infiltrate into the surrounding ground.

Cofield rephrased his question and asked if there are any standards that would suggest it is pervious. Senior Planner Sandy Cross stated that the Town's engineer, as well as other engineers, consider crush and run to be impervious material. Heard referenced the staff report section noting a Department of Environmental and Natural Resources comprehensive study which determined those surfaces to be impervious and unacceptable.

Murray questioned Staff's foreseeable process for handling potentially twenty years' worth of driveways because crush and run was not identified in the ordinance and how that will impact applicants with surveys containing gravel driveways. Heard stated that before, the assumption was that a gravel driveway meant it was pervious and nothing was underneath that was impervious. Cross added that former planning directors would check and ask surveyors to note the driveway as impermeable or not. She described recent instances where applicants wanted to complete a project and were unable to do so because crush and run was the subbase and was included in lot coverage calculations. Cross stated that staff assists applicants to resolve issues and will not search out properties and demand replacement. She noted the potential new language of the ordinance will mitigate future occurrences of noncompliant driveways moving forward.

Murray questioned if the addition of a date for when crush and run became unacceptable would be included as part of the amendment to the ordinance. Cross reminded that from staff perspective and policy, crush and run has never been accepted as permeable. Murray argued that this policy is not common knowledge because staff admits uncompliant driveways are out there because staff has had to ask it to be removed. Cross stated that situations have occurred where the driveway proposed on a site plan is gravel and when the final as built is completed, the conclusion is the driveway was constructed over crush and run therefore counting as coverage. Murray questioned the number of driveways out there and stated that it can't really be evaluated. He questioned if permits that require no change in footprint and have a gravel driveway would be subject to lot coverage inquiry. Cross stated that staff will assume the requirements have been met until proven otherwise and will implement an inspection requirement.

Murray questioned the definition of crush and run. Heard noted the use of the additional language which states "or similar impervious materials" which better defines the intent of the ordinance. Heard stated that custom mixes of materials would need to be certified by an engineer.

Chasen questioned what steps can be taken to check the box notating if the surface is permeable or not. Cross stated when surfaces are noted as gravel driveways, staff can request surveyors to specify the composition of the base material. Heard described tools available that can be used to punch through gravel and get a sense of what is underneath to help determine the subbase composition. Murray stated his discomfort with this process. Heard explained this process to only be used if the project is already complete and a way to inspect and identify if no information is being provided by the contractor or owner.

Murray asked about the permeability of the surface as a test. Cross stated that per engineers Mike Robinson and Dave Klebitz and state standards, crush and run is not permeable. Murray commented that the Town does not subscribe to state standards. He explained that Dare County and Duck are the only two local governments that do not count gravel parking as lot coverage. He

explained the argument is not whether crush and run is permeable, it is the fact that it was not explicitly prohibited in our ordinance prior to today, Murray added that the ordinance is 20 years old and there is a lot of crush and run out there. He mentioned that many property owners have purchased houses they didn't build and have driveways that do not count as lot coverage. Cross questioned if Murray's suggestion is to set a date in the ordinance with potential language reading "as of this date moving forward existing driveways would be exempt". Murray stated he doesn't know if that's the best thing to do but wants the board to discuss further and be careful about how to codify that to prevent future problems and protect people who were not subject to this.

Cofield questioned how it would be handled if someone had the material down as a subsurface, had gravel over it and subsequently wanted to add to the parking area. He asked if it would be counted as pervious, if they didn't touch what is there now. Heard stated if the property owner was changing the parking layout, they would be required to bring it into compliance with current standards. Cofield stated he was comfortable with the above.

Murray raised concern that in every other part of the zoning ordinance a property owner has a survey that shows their lot coverage consisting of concrete parking and a house, it's reasonable to expect that these surfaces that no one is arguing about, are impervious and count as lot coverage. He added that now this is a surface that staff is saying some surveyors count and some don't. He pointed out that just saying we don't accept this officially is not enough, because there is a mess from prior to today that we don't know if we have to clean up or we don't because it depends on what surveyor was used. Cofield stated he would assume that under the new ordinance, staff would ask the surveyor, whereas last month you would not. Murray added that before it was left up to the surveyor.

Chasen questioned if a property owner would be prohibited from making changes to the dwelling if the driveway that had previously not been considered lot coverage is now determined to have crush and run as a subbase. Heard stated it would be counted as lot coverage if changes were made which would increase lot coverage. He added that if unpermitted work is discovered, property owners would not be allowed to complete the new work without bringing the property into compliance and all factors must be considered in the calculation of lot coverage. Murray stated it was unfair to equate a shed without a permit to a driveway that did not count as lot coverage the Town approved prior. He questioned how to handle the conversation with the homeowner related to the discrepancies surrounding survey's varying descriptions of the driveways. Murray questioned how to substantiate the description ten years down the road once the gravel has migrated into the sand with grass growing in it. Cross stated if it's migrated into sand and you can't find crush and run, it should be gravel. Murray described various issues of broken stone that might look like crush and run and are going to be an issue.

Chasen questioned if a date of enactment would solve the issue. Murray replied that the concern is the amount of lot coverage this would allow. Cross stated the Town does not count gravel as lot coverage and that is intentional to make sure we leave that area permeable. She added that if crush and run is under the gravel, it is not permeable by engineer and State standards. Cross stated the goal is to help mitigate flooding. She noted the importance of being more particular during inspections and that good intentions cannot be assumed.

Murray noted the ordinance does not state permeable, it states semi-permeable and that reasonable minds could have thought there wasn't a problem. He added it is his opinion that the ordinance is being presented as clear, but what is being done to ordinance is not clear. Blakaitis questioned him about how to word the amendment.

Murray stated he doesn't believe that gravel over sand is a suitable driving surface. He added that if we want permeable gravel driving surfaces, the use of geo-matting must be instituted or something similar to hold that gravel in place. Murray pointed out that many of the geo-matting products call for a two-inch layer of ABC compacted underneath, which is crush and run, and are permeable products specified by the manufacturer. He added that allowing gravel parking as permeable is risky.

Cross stated that staff can leave ordinance as is and just do inspections. Murray stated the language related to crush and run is necessary in the ordinance, but he would like to know what will happen and anticipates many property owners will have to rip out driveways. Chasen pointed out the probable intent is to get properties into compliance. Heard stated there is a section of the ordinance that deals with nonconforming situations and staff would treat these situations accordingly.

Cofield suggested that the amendment is going in a good direction. He added that difficulties can arise when regulations change along the way and there is no easy solution. Cofield expressed his desire for more clarity. Murray agreed with Cofield but reiterated his concern with how it's being characterized as not just a clarification of the ordinance, but rather a change of the ordinance. He emphasized his desire to continue discussions on this topic in the future.

Cofield motioned to approve Ordinance 23-12, a text amendment to Subsection 156.092(C). Chasen seconded. Motion carried 3-1, with Murray dissenting.

Murray asked for clarification for applicants installing required gravel parking and if it would count as lot coverage. Cross stated that outside the 20-foot-wide maximum concrete drive aisle, the Town Code states that permeable parking is required. She described the current protocol that allows a drive aisle to be fanned out to the width of the house but must be permeable in nature. Murray asked if same would apply to all parking outside of the 20-foot drive aisle. Heard confirmed that it would.

*ORD 23-13: Text Amendment to Chapter 31 of the Town Code Amending Standards for Scheduling Council Meetings, Electing Officers and Appointing Board Members*

Heard noted ORD 23-13 does not involve amendments to any development standards under the purview of the Planning Board and the Board members are not required to take any formal action. He explained that because the proposed amendments address the procedure for appointing Board members, staff are making the Planning Board aware of this proposal and will pass along any comments from the Board. He reiterated no action is needed by the Board.

Planning Board members had no comments.

## DISCUSSION

### *Paint Colors for Commercial Buildings*

Heard stated the review of this potential text amendment proposal was authorized by Town Council. He explained that the purpose surrounding the discussion concerning commercial paint colors stemmed from an application to the Board of Adjustment appealing a decision by Community Development staff that the recent repainting of the building at 1242 Duck Road was inconsistent with Town Code Subsection 156.111(c). He noted the ordinance currently requires staff to interpret whether a certain color adheres to the commercial design guidelines or not. Heard informed the board that staff doesn't have an answer and changes aren't required but discussion is needed to determine if there are ways to make the ordinance less subjective as it relates to commercial paint colors. Heard requested comments and opinions from Planning Board members as to this issue.

Member Blakaitis questioned if other paint colors have been a problem. Heard described the recent issue as the appellant not consulting with staff prior to painting. Heard outlined the typical process as working with applicants prior to work commencing. He referenced Super Wings desire to paint their Duck location the same bright yellow as other locations, which staff denied. He described the compromise as a more toned down color than their other locations. Blakaitis questioned if a color chart is available. Cross stated there is not a chart and the ordinance is presently very subjective. Blakaitis suggested coming up with a chart.

Cofield stated he was unaware that this issue had gone before the Board of Adjustment and questioned the outcome. Heard stated the decision was split but upheld staff's decision to repaint a more subtle shade. Cofield noted the difficulty of the issue. Chasen referenced the wording low reflectance and described how white is a low reflectance color and is super bright, which can be an issue. She suggested the Town provide a base palette. She suggested allowing applicants to add an approved color to the palette moving forward. Heard state there are communities that utilize a similar policy, and this could be an option. He stated a lot of detail can limit the flexibility of owners, but it also clarifies what is acceptable. Cross added there is a variety and range of different palettes, for example historic or pastel, that could be included but there is currently no requirement for this. She noted the intent is to make commercial property owners aware of standards before they paint.

Murray suggested requiring a permit for painting with a fee included. He noted that commercial developers typically don't really care what color, they just don't want to do it twice. Chasen agreed that approval is key. Blakaitis described his role within his homeowners association and indicated property owners can't do anything unless it's reviewed and approved, which has been successful.

Cross questioned if the solution should be permit requirement rather than a change to the ordinance. Heard stated a new permit or fee schedule change would require Town Council approval.

Murray noted the importance of notifying commercial property owners of the required paint permit. Heard described the bi-annual educational letter sent by staff to the business community covering various topics and explained the paint permit requirement could be included in that form of communication.

Murray asked if consensus of the Board was to require a paint permit, all agreed.

## PLANNING TOPIC

### *Article - In Defense of Local Zoning*

Heard gave an overview of the article “In Defense of Local Zoning” to highlight the history, purpose, relevance and recent controversy surrounding zoning. He described our community as a tourist driven economy which doesn’t have the same needs as other communities, but pointed out that it is still important to define areas where certain activities are appropriate or not.

Cross noted that this discussion is timely as Jim Gould had informed her North Carolina is celebrating its 100<sup>th</sup> anniversary of the North Carolina Zoning Enabling Act.

Chasen questioned if all of Dare County allows accessory dwellings. Heard responded that he knows Manteo, Nags Head, Kill Devil Hills and Kitty Hawk permit accessory dwelling but was uncertain about Southern Shores. Chasen noted it would help with affordable housing, assuming it was not used as short-term rentals. Heard agreed accessory dwellings have the potential to help with that although some subdivisions prohibit them. He reiterated that most communities in Dare County presently have allowances for accessory dwellings.

Community Planner Jim Gould stated he found the section in the article related to the reduction of minimum parking requirements or elimination of that in some areas interesting. Heard noted many cities have on-street parking and garages which are subsidized. Murray questioned if Town is looking at parking. Heard pointed out that Council requested staff to look at opportunities to increase public parking and restrooms.

Gould informed the Board of the survey he is developing to gain understanding as to how people get around our community. Cross noted the survey will tie into commercial standards, which we will plan to revisit in the future.

## APPROVAL OF MINUTES

### Minutes from the July 12, 2023, Meeting

Cofield motioned to approve the minutes from July 12, 2023 as presented. Murray seconded with the addition of Council Liaison Sandy Whitman absence. Motion carried 4-0.

## STAFF COMMENTS

### Summary of August 2, 2023 Regular Town Council Meeting

Heard gave a short summary of the recent Town Council meeting.

### Project Updates

Cross gave a short overview of various projects going on in the Town.

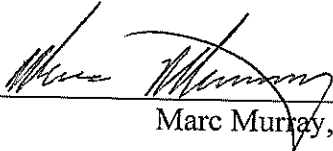
**BOARD COMMENTS**

None.

**ADJOURNMENT**

Blakaitis moved to adjourn the meeting. Cofield seconded. The meeting was adjourned by consensus of the Board Members at 7:38p.m.

Approved:



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Marc Murray, Chairman